

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LIBERTY MUTUAL INSURANCE GROUP,

2:10-CV-1951 JCM (PAL)

Plaintiff,

V.

PANELIZED STRUCTURES INC., et al.,

Defendants.

ORDER

16 Presently before the court is plaintiff Liberty Mutual Insurance Group's (hereinafter "Liberty
17 Mutual") motion to remand to state court (doc. #6). Defendant Panelized Structures Inc. (hereinafter
18 "PSI") responded (doc. #9), and plaintiff replied (doc. #13). Defendant PSI again replied with a
19 supplemental opposition to plaintiff's motion to remand (doc. #14), and plaintiff made a final reply
20 (doc. #15).

21 || I. RELEVANT FACTS

22 Plaintiff's filed suit to enforce alleged contractual indemnification and equitable subrogation
23 rights stemming from a worker's compensation insurance policy. This insurance policy and customer
24 agreement existed between Allied Forces Temporary Services Inc. ("AFTS"), and defendant PSI.
25 On May 1, 2004, plaintiff Liberty Mutual issued a worker's compensation insurance policy to AFTS,
26 a foreign corporation qualified to do business in Nevada.

27 On or about September 1, 2004, defendant PSI entered into a customer agreement with

1 AFTS, through which PSI agreed to indemnify AFTS against claims related to “damages to
 2 Company owned vehicles, machinery, or materials to which Allied Forces Temporary Services
 3 employees may be assigned.” (Doc. #1-1, compl. ¶ 15). Thereafter, an AFTS employee, Thomas
 4 Novick, was seriously injured when an agent or employee of defendant PSI ran over Novick with
 5 a rough terrain forklift leased by PSI, causing the loss of Novick’s leg.

6 Pursuant to the customer agreement, plaintiff Liberty Mutual filed suit in District Court,
 7 Clark County Nevada in 2006 to assert tort statutory subrogation rights pursuant to N.R.S. 616C.215
 8 to recover worker’s compensation benefits paid to Novick in excess of \$500,000. That case was
 9 consolidated with a negligence action filed by Novick, and the consolidated action remains in state
 10 court.

11 Plaintiff Liberty Mutual thereafter filed a second suit, alleging contractual indemnification
 12 and equitable subrogation in August of 2010. (Doc. #1-1). Before that case could be consolidated
 13 with the first action, the defendant removed the second suit to this court under the doctrine of
 14 diversity jurisdiction. (Doc. #1). In response, the plaintiff has filed the instant motion to remand.
 15 (Doc. #6).

16 **II. MOTION TO REMAND (doc. #11)**

17 Pursuant to 28 U.S.C. §1332, this court has original jurisdiction over all civil actions where
 18 the amount in controversy exceeds \$75,000, exclusive of interest and costs, and is between citizens
 19 of diverse citizenship. Here, the amount in controversy exceeds \$500,000 and is between parties of
 20 complete diversity. (*See* doc. #1) (stating that the principal place of business of plaintiff is
 21 Massachusetts, while the principal place of business of the defendant is California).

22 However, the plaintiff argues that the case is non-removable because it arises from a worker’s
 23 compensation dispute under Nevada law. Pursuant to 28 U.S.C. §1445(c), “a civil action in any state
 24 [c]ourt arising under the workmen’s compensation laws of such state may not be removed to any
 25 district court of the United States.”

26 The court disagrees and finds that plaintiff’s claims arise out of state contract law, rather than
 27 from worker’s compensation laws. This civil action does not rely on, is not based upon, and does not

28

1 require interpretation of the workmen's compensation laws of the State of Nevada, as the worker's
2 compensation benefits have already been paid to Mr. Novick. The issue before the court now is a
3 matter of contract interpretation. Although the dispute will be governed by state law, the court finds
4 that it has jurisdiction over this action pursuant to 28 U.S.C. § 1332 and, therefore, removal was
5 proper.

6 || Accordingly,

7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's motion to
8 remand (doc. #6) is DENIED.

9 || DATED January 31, 2011.

James C. Mahan
UNITED STATES DISTRICT JUDGE